IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 178-DB of 1998
DATE OF DECISION: 13.2.2007
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Balkaran Singh

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. S.S. Narula, Advocate
for the appellant.

Mr. J.S. Dhillon, DAG Punjab.
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ARVIND KUMAR, J.

The prosecution case, in nutshell, is that complainant Pritpal (PW.3) as well as appellant-accused Balkaran were having their houses adjacent to each other at Ajit Road, Bhatinda. Over a water drain, earlier thereto there was a dispute interse the parties, which had a drastic and calamitous result as Jarnail Singh, father of complainant Pritpal lost his life. According to the prosecution, on ill fated day i.e. 8.1.1997 at about 2:30 p.m. appellant Balkaran, armed with DBBL gun of .12 bore of his father Beekar Singh, hurled filthy abuses upon complainant Pritpal and his father Jarnail Singh. On reprimanded by Jarnail Singh, the appellant fired a gun shot from the rifle in the presence of Pritpal and his mother Sukhdev Kaur (PW.4), which hit on the forehead of Jarnail Singh. When Pritpal tried to catch hold of the appellant, he fired another shot from the rifle, which hit on the cheek of the complainant. However, the complainant succeeded in snatching the rifle from the appellant Balkaran, who made good his escape from the spot. Thereafter, Pritpal and Jarnail Singh were removed to the hospital by Raj Sharma and Harjinder Singh, who also came at the spot. PW.2 Dr. Sat Paul sent information (Ex.PF) to the police station civil lines,

Bhatinda regarding admission of both the injured, upon which Teja Singh Inspector (PW.5) reached Civil Hospital, Bhatinda where he was informed about the death of Jarnail Singh. After obtaining opinion about the condition of injured Pritpal, Insp. Teja Singh recorded his statement (Ex.PL) and sent the same through Const. Kuldip Singh to the police station for registration of the case, on the basis of which FIR (Ex.PL/2) was recorded by Gulzar Singh SI. During the course of investigations, PW.5 Teja Singh Inspector took into possession the gun (Ex.P3), two empty cartridges (Ex.P4 & P5) after unloading the gun Exhibit P3, vide recovery memo (Ex.PM), handedover to him by complainant Pritpal. Thereafter, he prepared the inquest report (Ex.PC), site plan (Ex.PQ) and took into police possession the blood earth stained lifted from the spot vide recovery memo (Ex.PR).

On 10.1.1997 appellant Balkaran was arrested and arm license (Ex.P6), which was in the name of his father Beekar Singh was taken into police possession vide recovery memo (Ex.PT).

On 17.1.1997 Beekar Singh was also arrested for having committed the violation of provisions of Arms Act.

Thereafter, on completion of usual formalities of investigations, the prosecution filed separate challans for offences under Section 302/307 IPC and under Section 25 of the Arms Act against the accused-appellant Balkaran Singh. A separate challan under Section 30 of the Arms Act was filed against the accused Beekar Singh.

Upon commitment to the Court of Sessions, the trial court framed charges against both the accused. Accused-appellant Balkaran was charge-sheeted under Sections 302/307 IPC in S.C. No. 12 and under Section 25 of the Arms Act in S.C. No.13 while a charge under Section 30 of the Arms Act was framed against the accused Beekar Singh in S.C. No.14.

Thereafter, vide order dated 9.9.1997 the trial court consolidated all the above-referred cases.

In order to substantiate the charges framed, the prosecution examined PW.1 Dr.S.S. Malik, PW.2 Dr. Sat Paul Garg, PW.3 Pritpal complainant, PW.3 Sukhdev Kaur wife of Jarnail Singh, PW.5 Inspector Teja Singh, PW.6 HC Surjant Singh, PW.7 Const. Ravinder Kumar, PW.8 Const. Malkiat Singh. Besides, the learned Public Prosecutor tendered the

affidavits of Const. Mehnga Singh, Const. Bagh Singh as Ex.PV and Ex.PX respectively apart from the report of Chemical Examiner, Forensic Science Laboratory and that Serologist respectively as Ex.PY, Ex.PZ and Ex.PCC and sanction of Addl. District Magistrate, Bhatinda as Ex.PDD.

When examined under Section 313 Cr.P.C., both the accused pleaded innocence. According to the appellant, on 8.1.1997 when he was going to attend the security proceedings, he was criminally intimidated by complainant Pritpal. Thereafter, on his return to home, he was given fist blow by complainant Pritpal Singh and when his mother Jaswant Kaur intervened. As soon as his mother Jaswant Kaur went to Jarnail Singh, father of Pritpal Pal, to complain about the conduct of Pritpal, Jarnail Singh gave a kick blow to her and on felling her down on the ground, he sat down on her body and tried to stab her with his gatra kirpan. Therefore, he fired at Jarnail Singh in self-defence as well as for saving the life of his mother Jaswant Kaur and a stray pellet had hit Pritpal Singh. He then kept the gun in the house and went to police station to report the occurrence. The accused Beekar Singh took the stand that he had kept his licensed gun in safe custody in an iron box.

In their defence, the accused examined DW.1 Dr. Niranjan Lal EMO, Civil Hospital, who had conducted the medical examination of Jaswant Kaur on 9.1.1997 and DW.2 Jaswant Kaur. Besides, copy of order dated 8.1.1997 was tendered in defence evidence.

The trial court, on conclusion of the trial held the accused-appellant guilty under Sections 302 IPC for having committed the murder of Jarnail Singh and sentenced him to undergo rigorous imprisonment for life with a fine of Rs.1000/- and in default thereof to further undergo rigorous imprisonment for 3 months. For causing injuries to Pritpal the trial court further held the appellant guilty under Section 307 IPC and sentenced him rigorous imprisonment for 5 years and to pay a fine of Rs.500/-. In default to make the payment of fine, the appellant was further required to undergo rigorous imprisonment for 2 months. The trial court further held the appellant guilty under Section 25 of the Arms Act, for which rigorous imprisonment for one year and fine of Rs.200/- has been awarded and in default thereof, he was further directed to undergo sentence for a period of 15 days. All the sentences were ordered to run concurrently.

However, the trial court finding no fault of accused Beekar acquitted him of the charge under Section 30 of the Arms Act.

Thus, the appellant Balkaran, through the instant appeal, has questioned the legality of judgment and order of his conviction and sentence passed by the trial court.

We have heard learned counsel for the appellant as well as learned State counsel and with the assistance rendered by them, have carefully gone through the records of the case.

In the present case, the occurrence is not in dispute, so as the presence of PW.3 Pritpal. The accused-appellant also do not deny his presence. The argument is with regard to the plea of right of self-defence of appellant himself as well as of his mother Jaswant Kaur (DW.2). The very basis of this argument is that DW.2 Jaswant Kaur also received injuries on her person for which, she was also medically examined by DW.1 Dr. Niranjan Lal. The contention is meritless. Merely because there was a quarrel and somebody from the side of accused had sustained injuries does not confer a right of private defence to the extent of causing death, as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused is under such grave apprehension about their safety that retaliation to the extent done was absolutely necessary. It cannot also be stated as a universal rule that whenever the injuries are on the body from the side of accused person, a presumption must necessarily be raised that the accused had caused injuries in exercise of the right of self defence. It is well settled that to claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused. However, in the instant case, no evidence, much less cogent and credible, has been adduced in this regard. No doubt DW.2 Jaswant Kaur, did receive injuries, but they are simple in nature so much so bruises and scabs which have been opined by Dr. Niranjan Lal (DW.1)as superficial and the possibility of inflicting of these injuries by friendly hand cannot be ruled out. Further the stand of the defence that Jaswant Kaur was first pulled by Jarnail Singh (since deceased) and when she fell down, he sat on her body and tried to inflict injuries with gatra kirpan, when the accused-appellant fired a shot, is again not

convincing as in that eventuality, the said gatra kirpan would have fallen on the ground after the receipt of fire shot injury by Jarnail Singh, but it was not so as PW.1 Dr. S.S. Malik found the said gatra with the body at the time of post-mortem examination of Jarnail Singh. There is another factor which negatives the plea of self defence. The case of the defence is that the accused-appellant fired a shot from his DBBL gun when Jarnail Singh was sitting on his mother Jaswant Kaur and in that situation some of the pellets would have definitely hit Jaswant Kaur, but she did not receive any pellet injury, which falsifies the plea of self defence. The another factor is that if the accused-appellant was sure of his right of self-defence, he would have got registered his plea immediately after the occurrence when he claims to have visited the police station. However, inaction on his part in this regard and in the backdrop of nature of injuries to Jaswant Kaur and the other factors, discussed above, do not probablise his version of right of self-defence. The gun (Ex.P3) had been produced by PW.3 Pritpal Singh before the police. No explanation has come forward from the side of the accused-appellant as to how gun came in the hands of Pritpal Singh, which probablises the prosecution version and negatives the version of the defence. There is no delay in lodging the FIR and so as the special reports. The counsel for the appellant has laid much stress that only one shot is fired and he had not repeated the shot and in this situation Section 302 IPC is not made out. The argument of firing of one shot has been developed on the ground that PW2 Dr. Sat Paul Garg, who medicolegally examined Pritpal Singh has opined that injury on the person of Pritpal could be a result of stray pellet injury or a ricocheting pellet and PW.5 Inspector Teja Singh, after the spot inspection, did not find any pellets from the courtyard of the house of the deceased. The contention is meritless. PW.2 Dr. Sat Paul Garg had only expressed the possibility which does not infer that injury had to be with a stray pellet only. Further a bare perusal of the site plan Ex.PQ prepared by PW.5 Insp. Teja Singh shows that the accused had fired a shot from point 'B on Jarnail Singh' when he was at point 'A'. PW.3 Pritpal is shown to have witnessed the occurrence from point 'C'. This point 'C' is in a different direction and is not in the straight line with point 'A' to infer that stray pellet could hit him when the shot had been fired from a short distance of 14/15 ft. No doubt no other pellets from the courtyard of the house of

deceased were recovered but some pellets might not have hit the wall and if some pellets hit the wall, the possibility cannot be ruled out that the same had not been noticed by the investigating officer. However, two empty cartridges (Ex.P4 & P.5), were taken into
possession vide recovery memo (Ex.PM) and were sent to FSL, Madhuban along with the gun. The report (Ex.PZ) of the Deputy Director (Ballistic) suggests that both the cartridges had been fired from the said DBBL gun i.e. one from the right barrel and the other one from the left barrel. Even if for the sake of arguments it is assumed that single shot had been fired, it cannot be said, as a rule of universal application, that whenever one shot is fired and not repeated, Section 302 IPC is ruled out. It would depend upon the weapon used, part of the body where injury was given and several such factors. In the instant case, shot fired by the accused-appellant hit the middle of the fore-head of the deceased, which is a vital part of the body and 14 pellets were recovered from the brain matter. The act of the accused-appellant can be called culpable homicide of the first degree which is defined in Section 300 IPC as “murder”.

No other argument has been raised.

As a sequel to the above discussion, we find no infirmity in the impugned judgment of the trial court. The appeal is wholly without merit and the same is accordingly dismissed.

(ARVIND KUMAR)
JUDGE

February 13,2007 **(MEHTAB S. GILL)**
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